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U.S. Citizenship and Immigration Services

B5

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: NOV 07 2005

EAC 03 197 51447

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

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DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. At the time of filing, the petitioner was a senior research associate at Harvard Medical School's Laboratory for Drug Development in Neurodegeneration (LDDN). The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services (CIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

Counsel describes the petitioner's work:

> While at the Center of Cellular Neurobiology and Neurodegeneration, University of Massachusetts, [the petitioner] . . . demonstrated that people with an elevated level of Homocysteine in their blood had nearly double the risk of developing Alzheimer's Disease. . . . Furthermore, [the petitioner] has played a crucial role in showing that nutrition and vitamins may significantly reduce the risk of Alzheimer's Disease. . . .
>
> The LDDN requested [the petitioner's] participation on a project dedicated to understanding, preventing, and treating Alzheimer's Disease. As a key member of the Alzheimer's project, [the petitioner] is responsible for screening large collections of drug-like molecules and a smaller library of FDA approved drugs for their ability to modulate the biological activity of the molecular and cellular processes that cause neurodegenerative diseases. The compounds that [the petitioner] discovers will be studied and optimized to create the next generation of therapeutic drugs for Alzheimer's Disease.
>
> As a result of the above findings and many other contributions, [the petitioner] has greatly impacted her field. Specifically, [the petitioner's] impact is noted through her numerous contributions, publications in esteemed journals, and awards.

We note that, from the above description, it does not appear that the petitioner would actually discover any new compounds, as counsel asserts. Rather, the petitioner would discover a particular use for already-known compounds.

Counsel claims that the petitioner "has already earned a global reputation for excellence" and "an international reputation as an outstanding scientist." To establish this reputation, the petitioner's initial submission includes eight letters, all from witnesses in Massachusetts. Most of the initial witnesses are on the faculties of Harvard, where the petitioner now works, or the University of Massachusetts at Lowell (UMass Lowell), where the beneficiary earned her doctoral degree. We shall consider these letters, and discuss examples thereof, but letters from one part of one state are not sufficient evidence to support counsel's claim of a "global reputation."

[redacted] director of the [redacted], states:

> Before joining the [redacted], [the petitioner] made seminal contributions in the area of homocysteine research by studying the detailed relationship between homocysteine and other leading factors to Alzheimer's disease and dementia. . . .
>
> [The petitioner] has unique multi-disciplinary training in biochemistry, cell biology, and neurology. Such a background is invaluable for conducting innovative research in Alzheimer's and other neurodegenerative diseases. . . . Her research work has consistently been the object of praise and recognition. . . .
>
> At the LDDN, she is working to discover new chemical agents that can be used as probes of cellular mechanisms of these diseases and, more importantly, as lead structures for the development of new therapeutics. . . .
>
> Her role in our drug discovery programs is of paramount importance and without her effort they would be a shadow of what they are.

[redacted] of the [redacted] states: "Compared with the U.S. scientists on her level in the field of neurology, I consider [the petitioner to be] an eminent scientist with broader knowledge, more research experience and higher productivity," whose knowledge of neurology and other disciplines sets her apart from her peers. The same assertion, identically worded, appears in a letter from [redacted], director of the Center for Cellular Neurobiology and Neurodegenerative Research at UMass Lowell. [redacted] also asserts that the petitioner "has had a revolutionary impact on the field of Alzheimer's disease." Other UMass Lowell researchers assert that the petitioner's training, education and experience are superior to those of others in her field. Professor [redacted] contends that the petitioner is "in the very top rank of research scientists in her field world-wide."

The only witness not on the faculty of Harvard or UMass Lowell is [redacted] of Wyeth Pharmaceutical Research. Counsel identifies [redacted] as "an international scientist not personally known to" the petitioner,

but the letter itself contains no indication of whether or not Dr. Wu personally knows the petitioner. [redacted] states:

> [The petitioner's] unique skills ensure that she will continue developing treatments of Alzheimer's that is [sic] highly demanded in [the] US public health field. . . .
>
> She has clearly demonstrated that she possesses a level of skills and abilities placing her at the top of this very important field. . . . She plays a unique role in the drug discovery projects at the LDDN. Without her efforts, the drug discovery progress at the laboratory would have been slowed down. It is certain that her value to the laboratory is irreplaceable, which is also the reason why she is recruited as [a] permanent employee, instead of as a postdoctoral fellow.

As shown above, several witnesses argue that the petitioner should receive a waiver so that she can continue to work at the LDDN. CIS records indicate that a private pharmaceutical company has since filed a new petition on the alien's behalf. Unless the new petition was filed in bad faith, this filing appears to signal the petitioner's intention to leave the LDDN to work for that company. Such a change of employment is not disqualifying in itself, but it certainly neutralizes any argument that the petitioner should receive the waiver because the LDDN cannot replace her.

The petitioner submits copies of her published articles, and information showing that one of those articles has been independently cited five times (not counting self-citations by the petitioner). This citation record does not demonstrate "a global reputation for excellence" or that the petitioner's work "has had a revolutionary impact on the field of Alzheimer's disease." The petitioner's impact need not be "global" or "revolutionary" to qualify for the waiver, but because the petitioner has seen fit to submit such grandiose claims, her credibility suffers if she is unable to substantiate these claims.

The director denied the petition, stating that the petitioner's reputation appears to be largely restricted to her mentors and collaborators, and that the record does not show frequent citation of the petitioner's work or otherwise corroborate the petitioner's claim that her work has had a major impact on the field.

On appeal, counsel asserts that the director should have issued a request for evidence, pursuant to 8 C.F.R. § 103.2(b)(8), because the record contained no clear evidence of ineligibility. Counsel requests that the AAO consider the new evidence submitted on appeal because the petitioner had not previously been granted the opportunity to submit it. We agree to this request and will give full consideration to the newly submitted materials accompanying the appeal.

The petitioner, on appeal, submits new witness letters. [redacted] a principal scientist at Wyeth Research, Cambridge, Massachusetts, states:

> I never worked or published with [the petitioner], and only meet her [sic] briefly during my recent visit at her institution and at a conference on AD about a year ago. . . .

> I believe that [the petitioner] is a gifted neuroscientist whose work has resulted in significant advancements in the field. . . .
>
> Her research findings unveiled the mystery between Homocysteine and Alzheimer's disease. This advancement in the understanding of Alzheimer's disease significantly improves the likelihood of prevention and treatment of the disease. . . .
>
> In her present studies, [the petitioner] has identified a compound, a verbenachalcone derivative, which is capable of stimulating neuronal cells outgrowth with low level of nerve growth factor. This is a very significant breakthrough in Alzheimer's disease therapeutic strategy. . . .
>
> In summary, I believe that [the petitioner] clearly ranks among the academic elite of medical research professionals.

With respect to the above comments regarding the petitioner's identification of a verbenachalcone derivative, the petitioner's initial submission contained no mention of that work. Thus, even if the petitioner had produced objective evidence to show the importance of this discovery (which she has not done), the petitioner has not demonstrated that such discovery would help to establish eligibility as of the petition's filing date as required by *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

[redacted] CEO of Neuroprotection Inc., Beverly, Massachusetts, was a postdoctoral researcher at Harvard Medical School shortly before the petitioner's arrival there. [redacted] states that the petitioner's finding "that Homocysteine may stimulate glutamate release leading to neuronal toxicity . . . will certainly provide a new strategy as to the treatment and prevention of degenerative neurological diseases, particularly Alzheimer's disease."

[redacted], assistant professor at the Medical University of South Carolina, is the only witness based outside of Massachusetts. [redacted] offers assertions comparable to those of other witnesses, and states "I have never worked or published with" the petitioner. While it may be true that the two never directly collaborated, the record shows that [redacted] worked at Harvard Medical School from 1997 to 2002, first as a research associate and then as an instructor. Thus, [redacted] was at Harvard Medical School at the same time as the petitioner, and [redacted] subsequent relocation to South Carolina is not indicative of wider recognition of the petitioner or her work. It remains that all of the petitioner's witnesses are, or very recently were, in Massachusetts, nearly all of them at Harvard Medical School and UMass Lowell.

Counsel asserts that a newly submitted list shows "a significant number of citations, which do not include any self-citations." The petitioner identifies no source for this list, which therefore amounts to a claim rather than corroboration thereof. The list shows twelve citations, which appears to be a moderate number at best. Furthermore, nine of the twelve listed citations appeared after the petition's June 2003 filing date; four of them show publication dates subsequent to the denial of the petition. This evidence is insufficient to establish a pattern of heavy citation of the petitioner's work, or that the petitioner had had a significant impact on Alzheimer's disease research as of the petition's filing date.

The materials submitted on appeal, like those in the initial filing, show a reputation largely confined to two universities in the Boston area and a level of independent citation that does not support the initial claims of "global" recognition of "revolutionary" work in Alzheimer's disease research. Witnesses assert that the petitioner's qualifications are superior to those of others at a comparable career stage. We note that exceptional ability, defined at 8 C.F.R. § 204.5(k)(2) as a degree of expertise significantly above that ordinarily encountered, is not inherently grounds for a national interest waiver; aliens of exceptional ability in the sciences are, statutorily, subject to the job offer requirement.

The petitioner is, without a doubt, a productive researcher who has impressed those in or near her circle of collaborators and superiors, but the record lacks objective evidence of her claimed impact on the field. The only materials that offer any indication that her work is especially important are letters created specifically for the purpose of supporting the present petition.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.